

State Board of Equalization
Department of Business Taxes

OPERATIONS MEMO

No. 734
July 6, 1982

Subject: Claim for Refund Procedures Based on E. C. Barnes v. State Board of Equalization,
118 Cal. App. 3d 994

General

The Court of Appeals in E. C. Barnes v. State Board of Equalization sets forth a clear rule that the doctrine of exhaustion of administrative remedies is applicable to business taxes refund actions. Accordingly, matters of both law and documentation supporting the claimed amount must be furnished to the Board for review and denial of the claim before the claimant may resort to the courts. The Board may now rely upon this rule when explaining to claimants that it is the claimant's responsibility to present both legal arguments and documentation to support their claims for refund.

In most of the cases, the claimants cooperate fully; unfortunately, a few do not. In these few instances, reference to the E. C. Barnes case should be made to support the Board's right to request specific, supportive information.

District Office Procedure

Claims received in district offices will be handled initially in accordance with Section 2309.15(a) of the Audit Policy and Management Guidelines (APMG). Should further participation by the district be needed, then the district should proceed as outlined in Section 2309.15(d) of the APMG. These procedures remain unchanged.

The above procedures will resolve and bring the majority of claims to a conclusion. However, a small percentage of claimants will cooperate at a level far below that which is needed for the staff to ready a valid decision and make a proper recommendation. When the claimant does not provide or compile the necessary support for a claim, the following steps will be taken by the district office:

- (1) The necessary summary and detail will be requested in writing using a format as outlined in the attached sample letter (Exhibit I).
- (2) If the claimant does not respond within 90 days to the letter in Exhibit I, then a second letter will be sent (Exhibit II).

- (3) If the claimant fails to comply with the request set forth in our second letter, the district office will notify the Audit Review and Refund Unit by memorandum of the claimant's inaction. The district shall include with the memorandum copies of the 90 and 30-day letters and shall recommend that the claim for refund be denied for failure to provide supportive documentation, and any other information which may be useful in finalizing the case.

For those claimants who do respond to our letters and provide us with the requested information, the district shall decide whether all, part or none of the claim for refund shall be approved. Any portion of the claim recommended for denial must be explained. The amount denied may be denied because the evidence submitted does not support a refund, or because nothing has been presented to support the refund, or a combination of the two.

To summarize, the effect of this policy is to deny claims on the merit of the documentation furnished or on the grounds that no documentation has been furnished by the claimant in support of the claim.

Obsolescence

This operations memo will become obsolete when it is incorporated into the Audit Policy and Management Guidelines manual.

J. D. Dotson
Assistant Executive Secretary
Business Taxes

DISTRIBUTION: 1-D

Account # _____
Date of Claim _____
Period of Claim _____
Amount _____

Gentlemen:

Our audit staff has been unable to obtain the necessary information and documents needed to verify and support your contentions as set forth in your claim for refund noted above.

Within 90 days of the date of this letter, please compile the following data concerning each transaction upon which your claim is based:

1. Date of sale or contract.
2. Contract number.
3. Description and sale price of the item claimed to be exempt.
4. Specific basis for the claimed exemption of each item (e.g. sale for resale, sale to U. S. Government, exempt labor, etc.)
5. Period for which the tax was reported and the amount of tax reported on each item claimed exempt.
6. If the claimed exempt sale was to the U. S. Government, provide a copy of the contract and purchase orders.
7. If the claimed exempt sale is for resale, a timely resale certificate must be provided or proof that the items were actually resold by the purchaser prior to any use by it.
8. In the case of construction contracts, provide a copy of the contract, bid sheets and job estimates for each contract.
9. In the case of rental receipts, provide a copy of each lease agreement and all pertinent details, including the amounts collected from each lessee.
10. Copies of sales invoices, contracts, purchase orders, and any other detailed data or documents related to the claim.
11. Any other information you believe supports your claim.

When the above data has been compiled in verifiable form, please contact our audit staff at the above address.

Very truly yours,

Date of Claim _____
Period of Claim _____

Gentlemen:

In our letter dated _____, copy attached, we requested that certain specific data be provided in support of your claim for refund. Nothing has been provided as of this date.

It is your responsibility to provide and compile the documentary evidence necessary to show that an overpayment of tax has been made.

Within 30 days of the date of this letter, please notify our staff at the above address that the requested documents are available and in a form ready for review. Failure to do so will result in our forwarding your claim for refund to the Board with a recommendation that it be denied on the grounds that you have failed to provide support for your claim for refund.

Very truly yours,